

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

**RECORD OF DECISION
FOR
ISSUANCE OF RIGHT-OF-WAY GRANTS,
SERIES OF MINERAL MATERIALS SALES,
AND
RELOCATION OF THE ARIZONA TRAIL**

**ASARCO's
Ray Mine
Tailings Storage Facility
Project
Environmental Impact Statement**

DOI-BLM-AZ-G020-2019-0006-EIS

2800 Right-of-Way (69kV Power Line) AZA-037390
2800 Right-of-Way (Tailings and Water Return Pipeline) AZA-037391
2800 Right-of-Way (Florence-Kelvin Highway) AZA-036430
Mineral Materials Sales
And
Arizona National Scenic Trail Relocation

**Tucson Field Office
Tucson, Arizona**

The U.S. Army Corps of Engineers



1.0 INTRODUCTION

This document constitutes the Record of Decision (ROD) for the Department of the Interior (DOI) Bureau of Land Management (BLM) for five actions, all of which support the Ripsey Wash Tailings Storage Facility project and include:

- Issuance of three Rights-of-Ways (ROW),
- Allowance for a series of mineral materials sales, and
- Relocation of the Arizona National Scenic Trail to BLM lands.

The Final Environmental Impact Statement (EIS) was completed in September 2018 and the Record of Decision (ROD) for the US Army Corps of Engineers was signed on December 14, 2018 and can be found here: <https://www.spl.usace.army.mil/Missions/Regulatory/Projects-Programs/>

2.0 Project Overview

In March 2013, ASARCO LLC (ASARCO) submitted a Section 404 permit application to the U.S. Army Corps of Engineers (USACE) for the construction and operation of a 2,500-acre new Tailings Storage Facility (TSF) that would receive tailings generated at the Ray Mine, an existing open pit copper mine located in Pinal County, Arizona about 10 miles northwest of the community of Kearny and approximately 65 miles southeast of the city of Phoenix. ASARCO's TSF site is located in Ripsey Wash, approximately four miles southwest of the existing Elder Gulch TSF which is the present site used at the Ray Mine for tailings disposal. The new Ripsey Wash TSF is located on surface owned by ASARCO some of which is split-estate underlain by federal minerals administered by the Bureau of Land Management (BLM).

ASARCO, as the Applicant, proposed to place fill material within Waters of the United States. The USACE required a permit application for the Ripsey Wash TSF to comply with regulations promulgated under Section 404 of the Clean Water Act, as the USACE determined the Ripsey Wash drainage and other ephemeral washes within the proposed Project footprint are "Waters of the United States" and subject to USACE's jurisdiction. Upon review of the Section 404 permit application submittal, the USACE determined that an EIS would be prepared to comply with the National Environmental Policy Act (NEPA) and that they would continue as the lead agency for NEPA compliance.

The project also requires a BLM decision for five actions to support the development of the Ripsey Wash TSF. These actions include issuance of three ROWs, allowance for a series of mineral materials sales, and relocation of the Arizona National Scenic Trail to BLM lands. The three ROWs include the following: one ROW for installation of an extension and upgrade to a power line, one ROW for installation of four pipelines which would include two tailings delivery pipelines, one reclaimed water pipeline, and one fresh water delivery pipeline, and one ROW for improvements to the Florence-Kelvin Highway which is not currently located in an existing ROW. The allowance for the series of mineral materials sales would be for the use of 5.2 million cubic yards of federal minerals in starter embankments and 3.7 million cubic yards of federal minerals for the final cover. The relocation of the Arizona National Scenic Trail would include 4.8 miles of trail construction on BLM lands, and abandonment of a segment of BLM managed trail.

The BLM was a cooperating agency on the USACE's EIS to ensure that the BLM's five actions were included and adequately analyzed in the Draft and Final EISes and that the USACE's EIS met the BLM's NEPA requirements.

3.0 THE DECISION

This BLM ROD authorizes:

1. Issuance of three ROW grants for the following actions:
 - a. One ROW for installation of an extension and upgrade to a power line,
 - b. One ROW for installation of four pipelines, and
 - c. One ROW for improvements to the Florence-Kelvin Highway.
2. Allowance for a series of mineral materials sales for the use of 5.2 million cubic yards of federal minerals in starter embankments and 3.7 million cubic yards of federal minerals for the final cover.
3. Construction of 4.8 miles of trail on BLM lands, and abandonment of a segment of BLM managed trail in connection with the relocation of 6.3 miles of the Arizona National Scenic Trail.

This ROD evaluates applicant-provided information, reviews the disclosed analysis in the Final EIS, and adopts the relevant mitigation measures identified in the Final EIS. Based on the analysis in the Final EIS and the entirety of the administrative record, BLM determines that the Federal Preferred Alternative meets the purpose and need of BLM and authorizes the components of the Federal Preferred Alternative that are located on lands managed by BLM.

The BLM actions were analyzed in the Ray Mine Tailings Storage Facility EIS as connected actions to the Tailings Storage Facility action. The EIS analyzed the affected environment, environmental consequences or impacts and developed mitigation measures associated with the Project. The BLM is using the Ray Mine Tailings Storage Facility Final EIS to support BLM's decisions.

The following is a detailed description of the five actions that require a BLM decision:

3.1 Right-Of-Way Grants

As part of their ROW application, ASARCO submitted three Plans of Development to the BLM (See Appendix K in the EIS).

- AZA-037390: Installation of a power line extension and improvements to a 44 kV overhead transmission line and fiber optic communication line. Improvements involve approximately 1.44 acres of BLM land. ASARCO will be constructing the overhead transmission power line and fiber optic communication structures from their Ray Mine electrical substation. The structures will be primarily built on land owned by ASARCO, except for the portion on BLM land (see Map 2).
- AZA-037391: Construction, operation, and maintenance of four pipelines for tailings delivery, fresh water delivery, and return of reclaimed water. This involves approximately 1.37 acres of BLM land. Tailings would be conveyed to the Ripsey Wash TSF as a contained overland slurry through two pipelines that would parallel the reclaimed water pipeline

and the fresh water delivery pipeline. The reclaimed water pipeline would convey water from the tailings impoundment back to the Ray Concentrator (see Map 2).

- AZA-036430: Improving a portion of the Florence-Kelvin Highway to improve access to and through the project area. Improvements involve approximately 3.16 acres of BLM land (see Map 2).

The construction and implementation of all three of these ROW actions will disturb approximately 5.97 acres of BLM surface.

The Grantee, by accepting these ROW Grants (AZA-036430, AZA-037390, and AZA-037391), agree and consent to comply with and be bound by the terms and conditions, and stipulations of the ROW.

3.2 Mineral Materials Sale

This BLM ROD authorizes ASARCO to obtain BLM-administered mineral materials within the Ripsey Wash TSF project area through mineral material sale contracts.

Quarrying common (non-mineralized) variety rock, even for onsite use, from the federal mineral estate, requires an approved mineral materials sales contract prior to commencing quarrying activities (See 36 CFR 3600). The BLM will not sell quarried mineral materials at a price less than fair market value at the time of the sale. Prior to removing mineral materials, ASARCO must request a mineral material sale contract as described in 43 CFR §3602.11 and may be required to submit mining and reclamation plans as outlined in 43 CFR §3601.40. Sale contracts will be issued as mineral materials are required and will be based on the fair market value of the mineral materials as established by the BLM at the time of sale. The Ray Mine Tailings Storage Facility EIS document serves as the NEPA compliance document for required mineral material sales.

3.3 Realignment of the Arizona Trail

This BLM ROD authorizes the following:

1. Construction, use, maintenance and operation of approximately 4.8 miles of new trail on BLM land, as part of relocation of approximately 6.3 miles of the Arizona Trail away from the proposed Tailings Storage Facility location. Trail construction would occur on BLM land as described in Appendix G of the EIS (see Map 3).
2. Abandonment of approximately 1.3 miles of trail granted to the United States by the Arizona State Land Department and 1.5 miles of existing trail on BLM lands (see Map 3).

All of the Arizona Trail decisions would be implemented following the applicable stipulations outlined in Appendix A.

3.4 Decision Rationale

BLM has determined that it will:

1. Issue three ROW grants for the following actions:
 - a. One ROW for installation of an extension and upgrade to a power line,
 - b. One ROW for installation of four pipelines, and

- c. One ROW for improvements to the Florence-Kelvin Highway.
2. Allow for a series of mineral materials sales for the use of 5.2 million cubic yards of federal minerals in starter embankments and 3.7 million cubic yards of federal minerals for the final cover.
3. Construct 4.8 miles of trail on BLM lands, and abandon a segment of BLM managed trail in connection with the relocation of 6.3 miles of the Arizona National Scenic Trail.

BLM's decision to authorize these activities is based on the following rationale:

1. This action best meets BLM's purpose and need described in the Final EIS and is technically and legally feasible.
2. The analysis of the environmental impacts identified in the Final EIS, along with corresponding measures that reduce or eliminate those impacts to the extent feasible, supports the mission of BLM and its policy goals and objectives.
3. The ROW decisions are supported by the Rights-of-Way regulations (43 CFR § 2800 *et seq.*), Federal Land Policy and Management Act (FLPMA), and the Surface Resources Act of 1955, as amended.
4. The construction, operation, and maintenance activities associated with the ROW projects is in conformance with BLM policy and guidance for issuing ROWs.
5. The action is consistent with BLM Visual Resource Management guidelines described in the BLM Phoenix Resource Management Plan.
6. The actions will implement the environmentally preferred alternative identified in the USACE ROD.
7. The U.S. Fish and Wildlife Service Biological Opinion concluded that there would be no impacts to southwestern willow flycatcher critical habitat, or the yellow billed cuckoo, associated with the proposed realignment of the Arizona Trail (page 33).
8. The relocation of a segment of the Arizona Trail is not a substantial relocation that requires approval by Act of Congress, pursuant to the National Trails System Act (P.L. 90-543, as amended), as supported by a letter from the US Forest Service who is the trail manager.

4.0 ALTERNATIVES

A full description of all of the alternatives that were analyzed in the Ripsey Wash Tailings Storage Facility EIS can be found in the Final EIS:

<https://www.spl.usace.army.mil/Missions/Regulatory/Projects-Programs/>

- a) No Action Alternative: NEPA regulations (40 CFR §1502.14(d)) require that EIS alternative analyses "include the alternative of no action". This alternative serves as a baseline to compare the effects of the proposed action alternatives. Under the no-action alternative, the USACE would deny the 404 permit, and ASARCO's proposal for the construction and operation of a new TSF would not go forward. Under this alternative, the TSF would not be developed in Ripsey Wash, and would not require a BLM decision.
- b) Ripsey Wash TSF – Preferred Alternative: The Ripsey Wash TSF presents the actions proposed and preferred by ASARCO. This proposed facility would be located within the

valley or basin area created by Ripsey Wash (and its tributaries) south of its confluence with the Gila River and approximately four miles southwest of the existing Elder Gulch TSF.

Similar to the ongoing tailings disposal operations at the existing Elder Gulch TSF, the Ripsey Wash TSF would be designed and operated as a closed-circuit (zero surface water discharge) facility. ASARCO would continue to pump tailings material as slurry from the existing Ray Concentrator at the Ray Mine through an existing pipeline to the existing thickener, where the tailings would be “thickened”. This process would remain unchanged from the existing operation. This alternative requires a BLM decision on issuance of ROWs for infrastructure, mineral materials, and relocation of the Arizona Trail.

c) Hackberry Gulch TSF Alternative: The Hackberry Gulch TSF Alternative would be located south-southeast of the existing Elder Gulch TSF. The Hackberry Gulch TSF would be designed and operated as a closed circuit (zero surface water discharge) facility.

Most of the Hackberry Gulch TSF construction, operational, and closure techniques and practices would be the same or similar to those currently used at the existing Elder Gulch TSF or proposed for use at the Ripsey Wash TSF. Under this alternative, the TSF would be developed in the Hackberry Gulch area and no BLM decisions would be required.

5.0 PUBLIC INVOLVEMENT

On August 26, 2013, the Corps published their Notice of Intent (NOI) to prepare an EIS for this Project in the Federal Register. A 60-day EIS scoping process was initiated to solicit comments about the Project. The USACE held two public scoping meetings in September 2013. Twenty two letters and emails were received during the EIS scoping process.

On January 29, 2016, the Notice of Availability (NOA) for the Ray Mine Tailings Storage Facility Draft EIS for public review was published in the Federal Register. A 45-day comment period was provided to solicit comments on the Draft EIS. The comment period was extended until May 5, 2016 at the request of the Environmental Protection Agency (EPA). In addition to the notice in the Federal Register, the USACE also placed public notices in local newspapers these notices announced the availability of the Ray Mine Tailings Storage Facility Draft EIS for public review, along with the time and place for the Draft EIS public meeting.

The USACE held a public meeting for receipt of comment on the Draft EIS on February 24, 2016 in Kearny, Arizona. About twenty people attended the meeting. The USACE received 29 letters and emails regarding the Draft EIS.

Comments about the five BLM decisions were obtained as part of the public review and comment on the Ray Mine Tailings Storage Facility Draft and Final EISes and responses are addressed in Appendix L of the Ray Mine Tailing Storage Facility Final EIS.

6.0 DECISION TO IMPLEMENT THE PROPOSED ACTION

This decision shall take effect immediately upon the date it is signed by the Authorized Officer and shall remain in effect while any appeal is pending unless the Interior Board of Land Appeals

issues a stay. Any appeal of this decision must follow the procedures set forth in 43 CFR, Part 4. Within 30 days of the decision, a notice of appeal must be filed with the Authorized Officer at Tucson Field Office, 3201 E Universal Way, Tucson AZ 85756. If a statement of reasons for the appeal is not included with the notice, it must be filed with the Interior Board of Land Appeals and to the Office of the Solicitor (Department of the Interior, Office of the Field Solicitor, Sandra Day O'Connor U.S. Court House #404, 401 West Washington Street SPC44, Phoenix, AZ 85003-2151) (see 43 CFR 4.413) within 30 days after the notice of appeal is filed with the Authorized Officer.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993)) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal and show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

If a petition for stay is submitted with the notice of appeal, a copy of the notice of appeal and petition for stay must be served on each party named in the decision from which the appeal is taken, and with the IBLA at the same time it is filed with the Authorized Officer.

7.0 SIGNATURE

It is my decision to:

1. Issue three ROW grants for the following actions:
 - a. One ROW for installation of an extension and upgrade to a power line,
 - b. One ROW for installation of four pipelines, and
 - c. One ROW for improvements to the Florence-Kelvin Highway.
2. Allow for a series of mineral materials sales for the use of 5.2 million cubic yards of federal minerals in starter embankments and 3.7 million cubic yards of federal minerals for the final cover.
3. Construct 4.8 miles of trail on BLM lands, and abandon a segment of BLM managed trail in connection with the relocation of 6.3 miles of the Arizona National Scenic Trail.

This decision is effective on the date this Record of Decision is signed.

/s/ Margarita Guzman (acting for)

June 17, 2019

Jayne M. Lopez
Tucson Field Office Manager

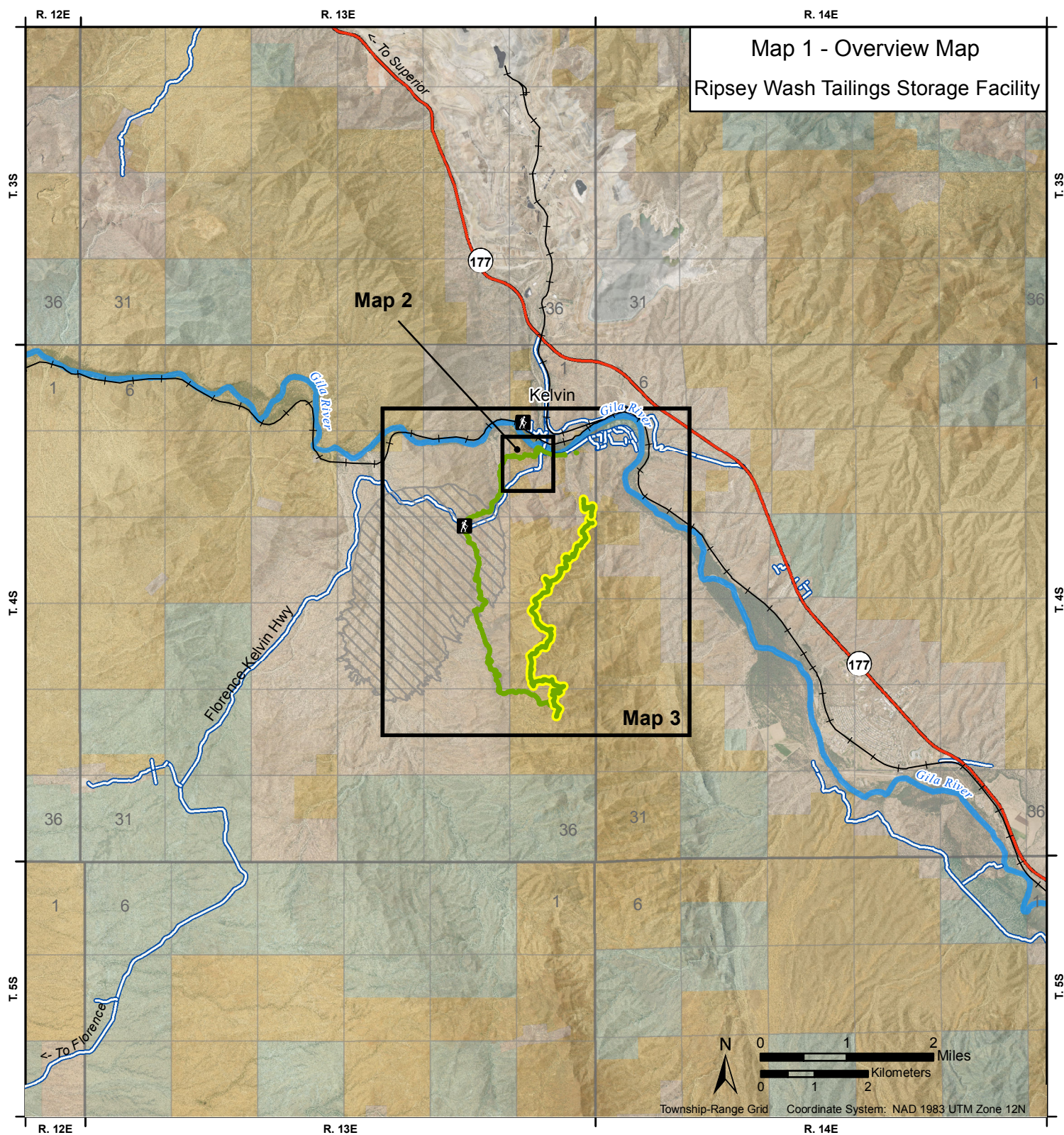
Date

Appendix A. Arizona Trail Stipulations

1. **Cultural Resource Protection:** Any cultural (historic/prehistoric site or object) or paleontological resource (fossil remains of plants or animals) discovered during trail construction operations shall be immediately reported to the Authorized Officer (AO) or his/her designee. All operations in the immediate area of the discovery shall be suspended until written authorization to proceed is issued. An evaluation of the discovery shall be made by a qualified archaeologist or paleontologist to determine appropriate actions to prevent the loss of significant cultural or scientifically important values.

If in connection with this work any human remains, funerary objects, sacred objects or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (P.L. 101-601; 104 Stat. 3048; 25 U.S.C. 3001) are discovered, operations in the immediate area of the discovery shall cease, the remains and objects shall be protected, and the operator shall immediately notify the BLM TFO. The immediate area of the discovery shall be protected until notified by the BLM TFO Manager that operations may resume.

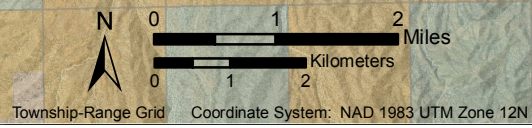
2. Trail construction would subject to a BLM approved Plan of Construction that would identify the construction schedule, construction crews and equipment, work sequence, safety, monitoring, and measures to ensure compliance with the alignment, standards and resource protection requirements.
3. ASARCO is responsible for funding the trail relocation, and relocation of related trail facilities, to ensure the continuity of the trail through the project area as a special condition of the Corps of Engineers permit for development of the TSF project.
4. Vegetation clearing activities related to trail construction would be scheduled outside the flycatcher and yellow-billed cuckoos' breeding period (April 15 to September 15) to minimize direct effects on individual flycatchers and cuckoos.
5. The trail relocation involves Sonoran Desert Tortoise habitat, and the species may be encountered. The tortoise would be protected during construction activities by requiring compliance with Arizona Game and Fish Department guidelines for protection Sonoran Desert Tortoise in construction projects.



Map 1 - Overview Map
Ripsey Wash Tailings Storage Facility

Map 2

Map 3



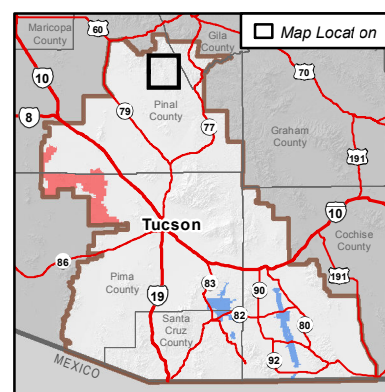
- Arizona National Scenic Trail, Realignment
- Arizona National Scenic Trail, Existing (To Be Abandoned)
- Arizona National Scenic Trail, Existing (To Remain)
- County or Municipality Maintained Road
- Ripsey Wash Tailings Storage Facility

- Surface Management**
- | | |
|-----|---------|
| BLM | Private |
| BR | State |

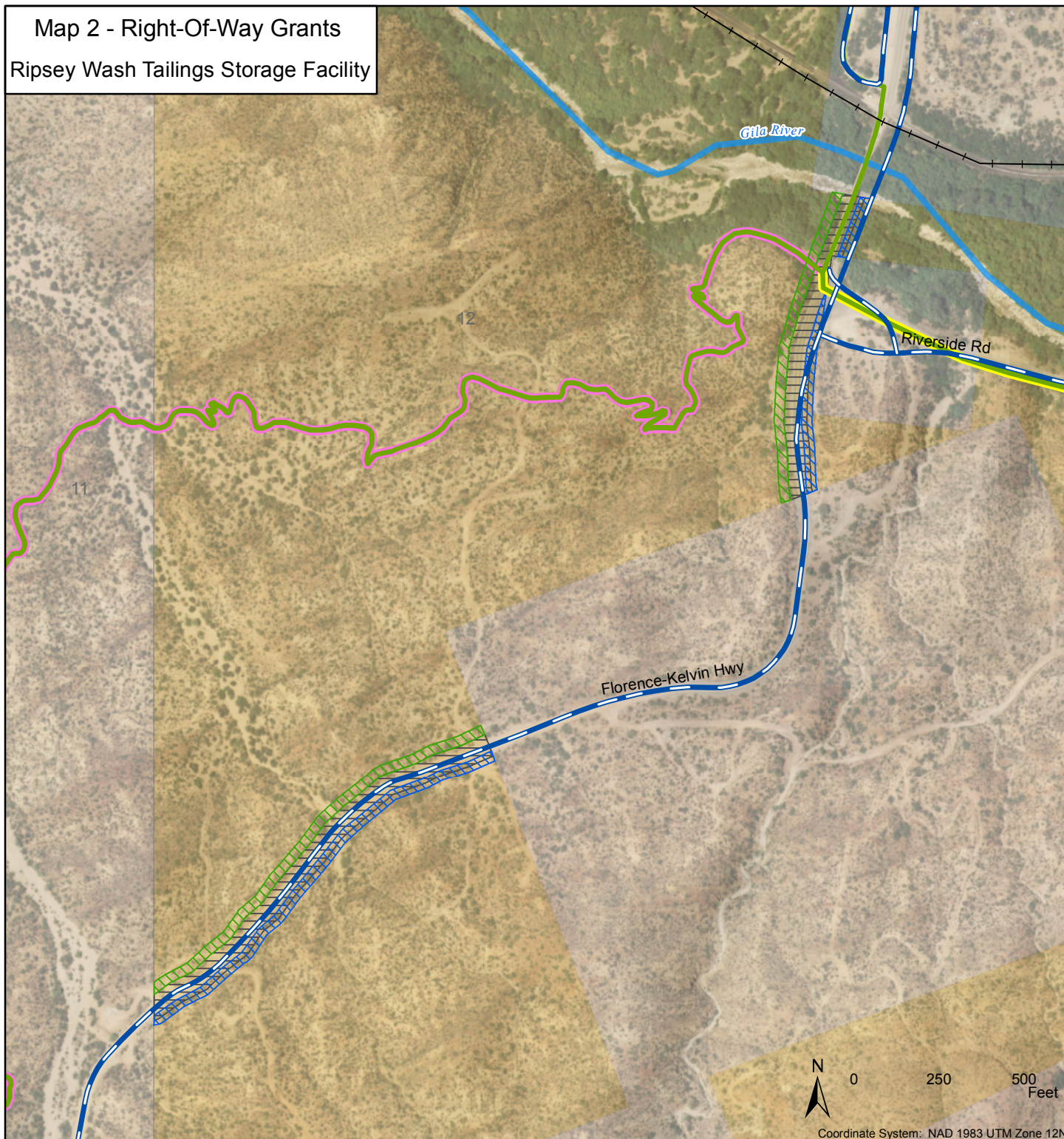
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Map Prepared: 6/13/2019



Map 2 - Right-Of-Way Grants Ripsey Wash Tailings Storage Facility



-  Powerline Right of Way (AZA-037390)
-  Pipeline ROW (AZA-037391)
-  Road Right of Way (AZA-036430)
-  Arizona National Scenic Trail, Realignment
-  Arizona National Scenic Trail, Existing (To Be Abandoned)
-  Arizona National Scenic Trail, Existing (To Remain)
-  County or Municipality Maintained Road

Surface Management

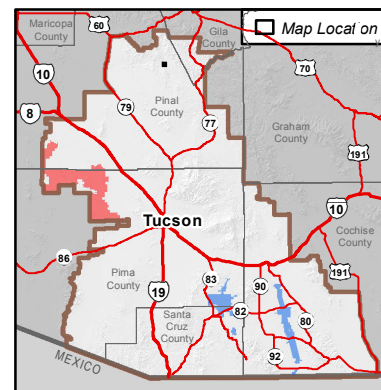
-  BLM
-  Private

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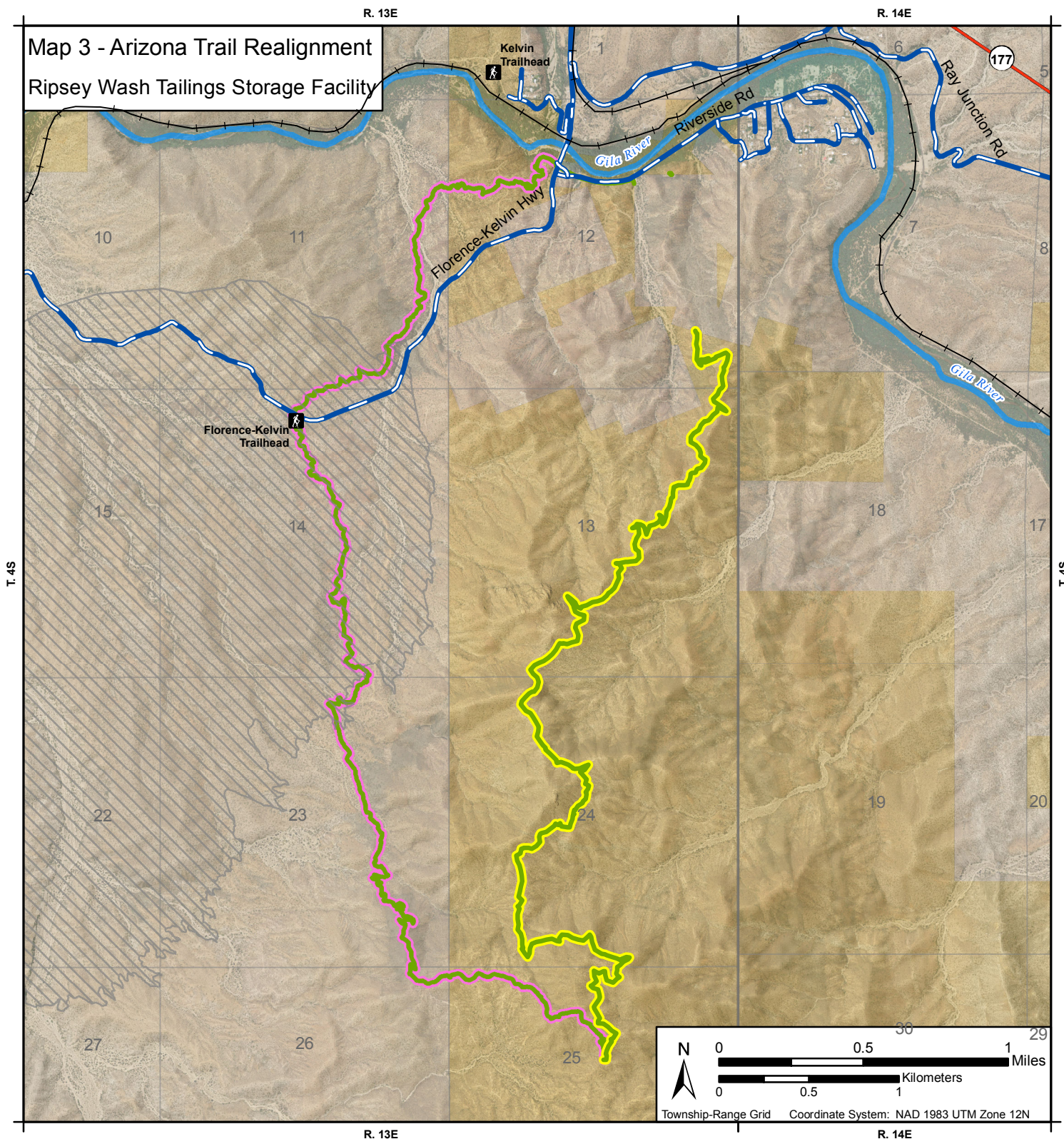


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Map Prepared: 6/13/2019



Map 3 - Arizona Trail Realignment Ripsey Wash Tailings Storage Facility



- Arizona National Scenic Trail, Realignment
- Arizona National Scenic Trail, Existing (To Be Abandoned)
- Arizona National Scenic Trail, Existing (To Remain)
- County or Municipality Maintained Road
- Ripsey Wash Tailings Storage Facility

Surface Management

- | | |
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| BLM | Private |
| BR | State |

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